

No. 76-1141

Supreme Court, U. S.

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In the Supreme Court of the United States

OCTOBER TERM, 1976

ODIE DUKE GRIGSON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR
THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

The court of appeals rendered no opinion. The opinion of the district court (Pet. App. 1a-6a) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on December 13, 1976. A petition for rehearing was denied on January 20, 1977. The petition for a writ of certiorari was filed on February 17, 1977. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a state officer who obtains money from a truck owner operating in interstate commerce in return for failing to enforce a state weight limitation obstructs or affects commerce by extortion in violation of 18 U.S.C. 1951, the Hobbs Act.

STATUTE INVOLVED

18 U.S.C. 1951 provides in pertinent part:

(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than \$10,000 or imprisoned not more than twenty years, or both.

(b) As used in this section-

* * * * *

(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

(3) The term "commerce" means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction.

STATEMENT

Following a jury-waived trial before the United States District Court for the Eastern District of Kentucky, petitioner was convicted of two counts of extortion in violation of 18 U.S.C. 1951, the Hobbs Act. He was sentenced to concurrent terms of two years' imprisonment. The court of appeals affirmed (Pet. App. 7a).

The facts are set forth in the opinion of the district court (Pet. App. 1a-3a). Briefly, the evidence showed that petitioner, a Kentucky law enforcement officer, stopped a truck belonging to the Hughes Construction Company on October 15, 1975, and cited the driver, Philip Shinkle, for operating an overweight vehicle. After the driver admitted that he knew the truck was overweight, petitioner offered to "work something out" with Ben Hughes, the owner of the truck (Tr. 9). The same day, petitioner met with the Hughes, who paid petitioner \$50 from the assets of the business to "take care" of the ticket (Tr. 10, 19, 22). Thereafter, the driver and the owner did not appear in court and did not pay any fine in connection with the offense. It is uncontested that Hughes Construction Company was engaged in interstate commerce at the time of the incident (Tr. 20).

On February 20, 1976, petitioner cited Curtis Mays, a truck driver for the Tri-State Drywall Supply Company, another firm engaged in interstate commerce, for operating an overweight truck. Petitioner told Mays that the fine could be \$500 to \$600 and suggested that Mays' boss contact petitioner so that they might work something out (Tr. 23-27, 32). Donald Dwire, Mays' boss, telephoned petitioner that afternoon, arranged a meeting with him, and then contacted the Federal Bureau of Investigation (Tr. 33-34). Several days later, an FBI agent posing as Mr. Dwire met with petitioner. Petitioner said that he would accept \$100 to take care of the citation, and the agent paid him \$100 in funds belonging to the FBI (Tr. 39-44; Gov't. Ex. 5).

ARGUMENT

1. Petitioner contends (Pet. 15-19) that his conduct in demanding and obtaining payments for voiding citations issued in his official capacity did not constitute extortion

within the meaning of the Hobbs Act, 18 U.S.C. 1951. That statute defines extortion as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence or fear, or under color of official right." Petitioner argues that the "color of official right" portion of the statute cannot be violated in the absence of coercion by threat, fear or duress.

This contention, which is inconsistent with the disjunctive formulation of the statute, has been uniformly rejected by the courts of appeals to which it has been presented, and this Court has consistently refused to review the issue. See *United States v. Hathaway*, 534 F. 2d 386 (C.A. 1), certiorari denied, No. 75-1529, October 4, 1976; *United States v. Trotta*, 525 F. 2d 1096 (C.A. 2), certiorari denied 425 U.S. 971; *United States v. Mazzei*, 521 F. 2d 639 (C.A. 3), certiorari denied, 423 U.S. 1014; *United States v. Braasch*, 505 F. 2d 139, 151 n. 8 (C.A. 7) certiorari denied, 421 U.S. 910; *United States v. Crowley*, 504 F. 2d 992 (C.A. 7); *United States v. Hyde*, 448 F. 2d 815 (C.A. 5), certiorari denied, 404 U.S. 1058; *United States v. Kenny*, 426 F. 2d 1205 (C.A. 3), certiorari denied, 409 U.S. 914.

Petitioner appears to argue (Pet. 18-19), that these events constituted bribery and not extortion, relying upon two of the opinions in *United States v. Staszczuk*, 502 F. 2d 875, 882 (C.A. 7) (Campbell, J., concurring), on rehearing *en banc*, 517 F. 2d 53, certiorari denied, 423 U.S. 837. Nothing in those opinions suggests, however, that payment solicited by an official to abstain from threatened enforcement of the law does not constitute extortion within the meaning of the Act, and in fact the law is clear that bribery and extortion are not mutually exclusive offenses. See, e.g., *United States v. Hathaway*, *supra*, 534 F. 2d at 394. In *United States v. Braasch*, *supra*, like *Staszczuk* a

Seventh Circuit case, the court of appeals rejected the argument that officials who take money for failing to perform their duties would not be guilty of extortion. The court stated (505 F. 2d at 151):

It matters not whether the public official induces payments to perform his duties or not to perform his duties, or even, as here, to perform or not to perform acts unrelated to his duties which can only be undertaken because of his official position. So long as the motivation for the payment focuses on the recipient's office, the conduct falls within the ambit of 18 U.S.C. §1951. That such conduct may also constitute "classic bribery" is not a relevant consideration.

This has been the consistent view of the courts of appeals. "Threatening to take official action - even where it is action that the official is duty-bound to take - for the purpose of coercing the victim to pay the official is extortion." *United States v. Hyde*, *supra*, 448 F. 2d at 832; see also *United States v. Gill*, 490 F. 2d 233 (C.A. 7), certiorari denied, 417 U.S. 968; *United States v. DeMet*, 486 F. 2d 816 (C.A. 7), certiorari denied, 416 U.S. 969. Petitioner's explicit threat to enforce the citation for the weight violation unless money was paid to him constituted extortion within the meaning of the statute.

2. Although petitioner's extortionate demands were directed at two companies engaged in interstate commerce, he also contends (Pet. 9-16) that his conduct did not sufficiently "affect commerce" to support application of the Hobbs Act. The courts below correctly rejected this argument.

In enacting the Hobbs Act, Congress intended to utilize its constitutional power to regulate commerce to the fullest possible extent. *Stirone v. United States*, 361 U.S. 212,

215. The purpose of the Act parallels the central design of the Commerce Clause itself and therefore proscribes extortion that "in any way or degree obstructs, delays or affects commerce" *United States v. Staszczuk, supra*, 517 F. 2d at 58. The statute thus grants federal jurisdiction in all situations where commerce is affected, even where the affect may be minimal. *United States v. Tropiano*, 418 F. 2d 1069 (C.A. 2), certiorari denied, *sub nom. Grasso v. United States*, 397 U.S. 1021; *Carbo v. United States*, 314 F. 2d 718, 732 (C.A. 9), certiorari denied, 377 U.S. 953; *United States v. Gill, supra*; *United States v. Amato*, 495 F. 2d 545 (C.A. 5).

Whatever the outer jurisdictional limits of the Hobbs Act, extortion directed at the owners and drivers of trucks engaged in commerce has always been considered to be within the reach of the Act. Cf. *United States v. Enmons*, 410 U.S. 396, 401; *United States v. Local 807*, 315 U.S. 521. Here, the fact that petitioner's scheme imposed on trucking companies engaged in interstate commerce the burden of paying funds to petitioner is sufficient to meet the jurisdictional prerequisite. The statute does not require the court to make the comparison urged by petitioner (Pet. 9) between the amount of money extorted and the fine that might have been levied had the citation been enforced. It is speculative whether petitioner would have stopped the trucks at all absent the opportunity they presented for extortion. That the ability to issue lawful citations was utilized in a fashion that placed a burden on those engaged in interstate commerce is sufficient to sustain the Hobbs Act violation.¹ Cf. *Perez v. United States*, 402 U.S. 146, 151-154.

¹The violation here affected commerce in an additional fashion by interfering with the enforcement of laws regulating the weight of

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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trucks. These state weight maximums are designed to protect the structural soundness of arteries of commerce, and there is a "realistic probability" that an interference with the enforcement of such laws would also have had some effect on interstate commerce by damaging the highways.

*The Solicitor General is disqualified in this case.